

the location of the proposed site, states that a notice of hearing will be published, and requests comments on the limited work authorization from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

(d) Part two of the application will be docketed upon a determination by the Director that it is complete.

(e) If part two of the application is docketed, the Director will cause to be published in the FEDERAL REGISTER and sent to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of part two of the application which states the purpose of the application, states that a notice of hearing will be published, and requests comments on the construction permit or combined license application, as applicable, from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

§ 2.645 Notice of hearing.

(a) The notice of hearing on part one of the application must set forth the matters of fact and law to be considered, as required by § 2.104, which will be modified to state that the hearing will relate only to the matters related to § 50.33(a) through (f) of this chapter, and the limited work authorization.

(b) After docketing of part two of the application, as provided in §§ 2.101(a)(9) and 2.643(d), a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. The supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall, file a petition for leave to intervene within the time prescribed in the notice. The petition to intervene must meet the applicable requirements in subpart C of this part, including § 2.309. This supplementary notice will also provide appropriate opportunities for participation

by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene under the initial notice of hearing on the limited work authorization and who was not dismissed or did not withdraw as a party, may continue to participate as a party with respect to the remaining unresolved issues only if, within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, that person files a petition for intervention which meets the applicable requirements in subpart C of this part, including § 2.309, *provided, however*, that the petition need not address § 2.309(d). However, a person who was granted discretionary intervention under § 2.309(e) must address in its petition the factors in § 2.309(e) as they apply to the supplementary hearing.

(d) A party who files a non-timely petition for intervention under paragraph (b) of this section to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(e) To the maximum extent practicable, the membership of the Atomic Safety and Licensing Board, or the individual presiding officer, as applicable, designated to preside in the proceeding on the remaining unresolved issues under the supplemental notice of hearing will be the same as the membership or individual designated to preside in the initial notice of hearing.

§ 2.647 [Reserved]

§ 2.649 Partial decisions on limited work authorization.

The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10

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CFR 50.10(d) without completion of the review for limited work authorizations required by subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision *sua sponte*, or to raise *sua sponte* an issue that has not been raised by the parties, will be exercised within the same time as in the case of a full decision relating to the issuance of a construction permit or combined license.

Subpart G—Rules for Formal Adjudications

SOURCE: 69 FR 2256, Jan. 14, 2004, unless otherwise noted.

§ 2.700 Scope of subpart G.

The provisions of this subpart apply to and supplement the provisions set forth in subpart C of this part with respect to enforcement proceedings initiated under subpart B of this part unless otherwise agreed to by the parties, proceedings conducted with respect to the initial licensing of a uranium enrichment facility, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for nuclear power reactors, where the presiding officer by order finds that resolution of the contention necessitates resolution of: issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter, proceedings for initial applications for construction authorization for high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for initial applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area, and any other proceeding as ordered by the Commission. If there is any conflict between the provisions of this subpart and those set forth in subpart C of this part, the provisions of this subpart control.

§ 2.701 Exceptions.

Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative

procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions.

§ 2.702 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he or she is not available, the Chief Administrative Judge, or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made. However, the officer may not determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it must be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena must be made by delivery of a copy of the subpoena to the person named in it and tendering that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena must be paid the fees and mileage paid to witnesses in the district courts of the United States by the party at whose instance they appear.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of